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| 10/573,960 | 03/29/2006 | David R. Dalton | SP17792US | 1742 |
| 20875 7590 08/31/2007 MICHAEL C. POPHAL EVEREADY BATTERY COMPANY INC 25225 DETROIT ROAD P O BOX 450777 WESTLAKE, OH 44145 | | | EXAMINER DUNN, DANIELLE N | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,960

Applicant(s)

DALTON ET AL.

Examiner

Danielle Dunn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 7 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Claim Objections

2. **Claim 1** is objected to because of the following informalities: Claim 1 states "said reflector including an aperture through which said light source **can** pass," this implies that the light source does not have to pass through the aperture. If Applicant intends for the light source to pass through the aperture, this needs to be positively recited in the claim language. Appropriate correction is required.
3. **Claim 7** is objected to because of the following informalities: Claim 7 states "said shutter aperture will open and or expand by means of said light source pushing through the shutter aperture." It is not clear if the shutter will open and expand **or** the shutter will expand by means of the light source pushing through the shutter aperture. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. **Claims 1-6, 8-10 and 12-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner (US 2,259,416) and further in view of Papke (US 1,524,205).

- a. Regarding **claim 1**, Gardner teaches a lighting device (**battery operated flashlight 10**) including a housing (**shown in Fig. 1, 3 and 5**) which receives a power supply, a light source (**lamp bulb 11**), a reflector (**reflector 13**) mounted

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to the device which receives a lens (**glass plate 15**), the reflector has an aperture through which the light source passes through (**shown in Fig. 1**), the aperture also has a shutter associated with it (**shutter 18, 118 and 218**).

b. Gardner does not appear to explicitly teach a tubular lens surrounding the light source.

c. However, Papke teaches a tubular lens (**lens 25; pg. 1, lines 74-78; shown in Fig. 3**).

d. Regarding **claim 2**, Gardner teaches a shutter that is biased to close the aperture (**shutter 218, Fig. 5, pg. 2 lines 46-54**).

e. Regarding **claim 3**, Gardner teaches a shutter that is a panel hinged to the rim of the aperture (**shown in Figs. 1, 3 and 5, shutters 18, 118 and 218 are hinged to the rim of the aperture, pg. 1, lines 33-36**).

f. Regarding **claim 4**, Gardner teaches a shutter that is a planar member that can expand (**open position**) and contract (**closed position**) as shown in Figs. 3 and 5.

g. Regarding **claim 5**, Gardner teaches the planar member being elastic (**shutters 18, 118 and 218 are flexible and readily recoverable from depression**).

h. Regarding **claim 6**, Gardner teaches a shutter aperture that closes **(shown in Figs. 3 and 5)**

i. Regarding **claims 8 and 10**, Gardner teaches that the shutter is made of sheet metal **(pg. 1, lines 29-30)**; therefore it has one surface of a reflective light color and when the shutter is closed, a reflective surface faces the light source when the shutter is closes the aperture.

j. Regarding **claim 9**, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the shutter of a polymeric material, since it has been held by the courts that selection of a prior art material on the basis of its suitability for its intended purpose is within the level of ordinary skill. *In re Leshing*, 125 USPQ 416 (CCPA 1960) and *Sinclair & Carroll Co. v. Interchemical Corp.*, 65 USPQ 297 (1945).

k. Regarding **claim 12**, Gardner teaches the aperture being located at one end of a cylindrical extension **(one end of the flashlight 10)** formed as part of the reflector **(as shown in Fig. 1)**.

l. Gardner and Papke are analogous art because they are from the same field of endeavor, flashlights.

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m. It would have been obvious to one having ordinary skill in the art, at the time of the invention, having the teachings of Gardner and Papke before him or her, to modify the lens of Gardner to include the tubular lens of Papke in order to use the light device as an ordinary flashlight for directing its light mainly forward, or using it for steady illumination, throwing its light through a large portion of a sphere.

n. Regarding **claim 13**, Papke teaches the tubular lens including a friction means that provides friction against the movement of the reflector relative to the tubular lens (**Pg. 1, lines 74-84**)

o. It would have been obvious to one having ordinary skill in the art, at the time of the invention, having the teachings of Gardner and Papke before him or her, to modify the lens of Gardner to include the tubular lens with the friction means of Papke in order to use the light device as an ordinary flashlight for directing its light mainly forward, or using it for steady illumination, throwing its light through a large portion of a sphere.

8. **Claims 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner (US 2,259,416) and Papke (US 1,524,205), as applied to claim 1, and further in view of Takahashi et al. (US 5,305,033).

p. Gardner and Papke teach all the limitations as disclosed above.

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q. Gardner and Papke do not explicitly disclose the friction means being an O-ring.

r. However, Takahashi et al. teaches using an O-ring between the cover 2 and the main body 3.

s. Gardner, Papke, and Takahashi et al. are analogous art because they are from the same field of endeavor, flashlights.

t. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Gardner, Papke, and Takahashi et al. before him or her, to use an O-ring as the friction means because this would allow for fluid tight construction of the flashlight.

9. **Claims 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner (US 2,259,416) and Papke (US 1,524,205), as applied to claim 1, and further in view of Reiff et al. (US 2002/0191396).

u. Gardner and Papke teach all the limitations as disclosed above.

v. Gardner and Papke do not explicitly disclose the light source being an LED.

w. However, Reiff et al. teach using LEDs (LEDs 20) in a flashlight.

x. Gardner, Papke, and Reiff et al. are analogous art because they are from the same field of endeavor, flashlights.

y. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Gardner, Papke, and

Reiff et al. before him or her, to use an LED as the light source because LEDs produce light, have a long life which may be from ten to twenty times the life of a fluorescent or incandescent lamp.

10. **Claims 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner (US 2,259,416) and further in view of Papke (US 1,524,205).

z. Gardner teaches a reflector 13 mounted in a tubular member (flashlight 10).

aa. Gardner does not appear to explicitly teach a tubular lens surrounding the light source.

bb. However, Papke teaches a tubular lens (lens 25; pg. 1, lines 74-78; shown in Fig. 3). Papke also teaches a reflector 20 mounted in a tubular member (electric lamp; Figs. 1-3), which is mounted for sliding on the tubular lens (shown in Figs. 2 and 3; pg. 1, line 110 –pg. 2, line 8, and 15-22).

cc. Gardner and Papke are analogous art because they are from the same field of endeavor, flashlights.

dd. It would have been obvious to one having ordinary skill in the art, at the time of the invention, having the teachings of Gardner and Papke before him or her, to modify the lens of Gardner to include the tubular lens and reflector of Papke in order to use the light device as an ordinary flashlight for directing its light mainly forward, or using it for steady illumination, throwing its light through a large portion of a sphere.

Allowable Subject Matter

11. **Claims 7 and 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: Regarding **claims 7 and 11**, the prior art does not suggest or explicitly disclose the combined subject matter, more specifically a shutter that opens up and/or expands by means of the light source pushing through the shutter aperture.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4,577,263 teach a miniature flashlight that can operate as an area light.

US 4,782,432 teach a multi-function flashlight.

US 1,536,623 teach using shutters on a light device.

US 1,376,976 teach a tubular lens on a flashlight.

US 1,346,138 teach a tubular lens on a flashlight.

US 4,286,311 teach a flashlight with a movable lamp.

US 6,598,993 teach a light device.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Dunn whose telephone number is 571-270-3039. The examiner can normally be reached on M-F 7:30-5:00 with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DND
8/24/07



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